IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3633 of 2001
to
First Appeal No. 3642 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Special Land Acquisition Officer, Rajpipla,
versus
Chandrasinh Nathusinh Kher

Appearance:
Mr. K.P. Pandya, AGP, for the appelants
Mr. A.J. Patel, for respondents-original claimants

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 16/08/2001

COMMON ORAL JUDGMENT :

1. Appellant, Special Land Acquisition Officer, by filing this group of first appeals under Section 54 of the Land Acquisition Act, 1894 (to be referred to as

"Act' for short) read with Section 96 of the Code of Civil Procedure, 1908, has challenged the common judgment and award dated September 30, 2000 passed by the learned 5th Joint Civil Judge (S.D.), Bharuch, in group of Land Reference Cases Nos.1011 of 1988 to 1020 of 1988. As common question of facts and law arise for my consideration, I propose to dispose of all these appeals by this common order.

2. Agricultural lands of the respondents-claimants situated at village Asha, Taluka: Jhagadiya, District Bharuch, came to be acquired for the public purpose of "Karjan Canal" by publication of notification under Section 4(1) of the Act on January 15, 1987. After following usual procedure, notification under Section 6 of the Act came to be published in the Government Gazette on September 10, 1987. In response to the notices issued under Section 9 of the Act, the claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.1500 per Are. The Land Acquisition Officer, on the basis of the materials placed before him, made his award on January 30, 1988 and offered compensation for the acquired lands to the claimants at the rate of Rs.150 per Are. The claimants were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the applications to the Court for determination of adequate compensation. Accordingly, references were forwarded to the District Court, Bharuch, which were numbered as Land Reference Cases Nos. 1011 of 1988 to 1020 of 1988. All the land reference cases came to be consolidated and the parties led common evidence in Land Reference Case No.1016 of 1988.

3. The claimant, Chandrasinh Nathusinh Kher, was examined at Exh.33. He deposed that the acquired lands were having high fertility and the agriculturist were raising crops of banana, cotton, sugarcane and were getting income of Rs.32000/- from sugarcane, Rs.16000/from cotton and Rs.30,000/- from banana per Acre every year. During his deposition, the claimant produced previous award rendered by the Reference Court in Land Reference Cases Nos.313 of 1991 to 324 of 1991, wherein, the Reference Court had determined market value of acquired lands of the same village at the rate of Rs.700/- per Are in the year 1989. A certified copy of the judgment and award was produced at Exh.35. It may be mentioned that previous award Exh.35 was challenged by the Special Land Acquisition Officer in this Court by

filing First Appeals Nos.1123 of 2001 to 1134 of 2001, wherein this Court, by oral judgment dated July 30, 2001, dismissed the appeals and confirmed the market value of acquired lands of village Asha at the rate of Rs.700/per Are for irrigated land and Rs.650/- per Are for non-irrigated land as on March 1, 1989.

4. The Reference Court, by relying upon the previous award, had determined the market value of the present acquired lands at the rate of Rs.560/- per Are by deducting 25% of the determination of the market value of the previous award Exh.35, because there was gap of nearly two years between two notifications issued under Section 4(1) of the Act.

5. Heard learned Additional Government Pleader, Mr. K.L. Pandya, for the appellant and learned counsel Mr. A.J. Patel for the respondents-original claimants. I have also taken into consideration relevant documents as well as oral evidence produced by learned counsel for the parties for my perusal before deciding this group of appeals.

6. In my view, the Reference Court has not committed any error in placing reliance on the previous award of the same village Asha wherein the market value of acquired lands of village Asha was determined at the rate of Rs.700/- per Are for irrigated land and Rs.650/- per Are for non-irrigated land as on March 1, 1989. The present acquired lands were acquired in 1987. Therefore, the Reference Court was justified in giving deduction of 25% of the total market value of the acquired lands of the same village on March 1, 1989. Therefore, in my opinion, the Reference Court had not committed any error in determining market value of acquired lands of village Asha at the rate of Rs.560/- per Are. The Reference Court has correctly appreciated the evidence of the case and applied principles which have been enunciated by the Supreme Court from time to time to the facts of the case. I am of the view that determination of market value of acquired lands of village Asha at the rate of Rs.560 per Are as on January 15, 1987, cannot be regarded as excessive at all. Under the circumstances, I am of the opinion that no ground is made out by learned counsel for the appellant to interfere with the impugned award in these appeals. The benefit extended to the respondents-claimants under statutory provisions of Sections 23(1-A), 23(2) and interest under Section 28 are also just and proper and does not call for any interference in these appeals. However, the claimants

would not be entitled to solatium on the additional amount of 12% under Section 23(1-A) of the Act and no interest shall be payable on the amount of solatium as per the decision of the Supreme Court in the case of Prem Nath Kapur and another vs. National Fertiliers Corporation of India Limited and others, reported in (1996) 2 Supreme Court Cases 71. However, learned counsel Mr. A.J. Patel for the claimants has placed reliance on the decision of the Supreme Court in the case of Annie Varghese and others vs. State of Kerala and others, reported in (1999) 6 Supreme Court Cases page 551, where, the Supreme Court has observed that, "if the Constitution Bench upholds the contention that the interest on solatium is to be granted, the petitioner can move the High Court to amend judgment and decree for carrying out the legal position declared by the Constitution Bench in that regard." In view of the observation of the Supreme Court in the case of Annie Varghese (supra), it would be open for the claimants to move the High Court to amend the judgment and decree for carrying out the legal position declared by the Constitution Bench.

7. For the foregoing reasons, all the appeals fail and are dismissed with no order as to costs.

8. It is submitted by the learned counsel for the claimants that the claimants' lands were acquired way back in 1987 and till date the amount awarded by the Reference Court is not deposited by the Acquiring Body. Therefore, the Acquiring Body shall make all endeavour to deposit or pay the awarded amount to the claimants within six months from today.

August 16, 2001 (M.H. Kadri, J.)
(swamy)